

UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

JUDGE PETER J. WALSH

824 MARKET STREET
WILMINGTON, DE 19801
(302) 252-2925

June 2, 2004

Laura Davis Jones
Kathleen Marshall DePhillips
Pachulski, Stang, Ziehl,
Young, Jones & Weintraub, P.C.
919 North Market Street
16th Floor
P.O. Box 8705
Wilmington, DE 19899-8705

Andrew W. Caine
Jeffrey P. Nolan
10100 Santa Monica Blvd.
Suite 1100
Los Angeles, CA 90067

Counsel for Plaintiff,
Inacom Corp.

Ian Connor Bifferato
Bifferato, Bifferato &
Gentilotti, P.A.
1308 Delaware Avenue
P.O. Box 2165
Wilmington, DE 19899-2165

R. Connor Heist
R. Connor & Associates, P.C.
222 E. Wisconsin Avenue
Suite 203B
Lake Forest, IL 60045

Counsel for Defendant, Origin
Micro, Inc.

**Re: Inacom Corp., on behalf of all affiliated Debtors v. Origin
Micro, Inc.
Adv. Proc. No. 02-02197**

Dear Counsel:

This is with respect to the Plaintiff's motion for summary judgment (Doc. # 21). For the reasons briefly set forth below, I will deny the motion.

The Plaintiff seeks summary judgment on the grounds that the undisputed facts show that the Defendant is not entitled to the § 547(c)(2) "ordinary course of business" defense. While I agree

that the Defendant's "shipping hold" notice of March 15, 2000 undermines the ordinary course of business defense, there are a number of factual matters which I believe are still in issue.

Pursuant to the invoices, the terms were to be at net 30 days. However, the Plaintiff had a consistent history of making payments well beyond the 30 days. Indeed, the Plaintiff acknowledges that the interval for payment in December 1999 was 43 days, in January of 2000 was 43 days and in February of 2000 was 54 days. With respect to the subject transfers the Plaintiff asserts that because the interval is 72 days, the ordinary course of business defense does not apply. However, it is undisputed that the Plaintiff and the Defendant had significant communications regarding the effect on payments caused by Compaq's acquisition of a portion of the Plaintiff's business.

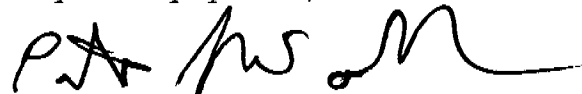
The Defendant asserts that the effect of the Compaq transaction was to create a new regime for the timing of payments. Exhibit 4 to the Defendant's answering brief suggests that the Compaq transaction would result in a 60 day payment arrangement. It seems to me that it could be argued that if the parties were in agreement that the new theoretical payment period became 60 days rather than 30 days, given the Plaintiff's consistent history of paying the invoices long after the old theoretical 30 day time period, a new actual ordinary business practice was effected. Adding the additional 30 days to the average of 43 days would

produce a payment period of 73 days from the date of the invoice. If that was the new arrangement between the Plaintiff and the Defendant, then the payment may indeed have been made within an agreed ordinary course. While I seriously question whether the Defendant can present sufficient facts to convince me of such a new agreed payment regime, I cannot conclude at this point that this is not a materially disputed fact.

In its opening brief and its reply brief, the Plaintiff repeatedly asserts that during the relevant period it was experiencing a liquidity crisis and was holding payment checks. There is no evidence in this adversary proceeding that supports the assertion of a liquidity crisis, and there is certainly no evidence that the Defendant was aware of any liquidity crisis. Furthermore, the Defendant's Exhibit 3 shows a history of the Plaintiff holding checks. Holding checks may be a business practice not necessarily dictated by a company's liquidity problem.

I would also note that in addition to the ordinary course of business defense, the answer to the complaint also raises the two separate defenses of new value and the absence of insolvency. These defenses are not addressed in the Plaintiff's motion for summary judgment, but based on what I know from the record in the chapter case I doubt there is any merit to the Defendant's solvency defense.

Very truly yours,

A handwritten signature in black ink, appearing to read 'P.J. Walsh', with a stylized flourish at the end.

Peter J. Walsh

UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

In Re:)	Chapter 11
)	
INACOM CORP., et al.,)	Case No. 00-2426 (PJW)
)	
Debtors.)	Jointly Administered
)	
INACOM CORP., on behalf of all)	
affiliated Debtors,)	
)	
Plaintiff,)	
)	
v.)	Adv. Proc. No. 02-02197
)	
ORIGIN MICRO, INC.,)	
)	
Defendant.)	

ORDER

For the reasons set forth in the Court's letter to counsel of this date, the Plaintiff's motion for summary judgment (Doc. # 21) is DENIED.



Peter J. Walsh
United States Bankruptcy Judge

Dated: June 2, 2004